

REMARKS

Claims 1-18 are pending.

No new matter has been added.

Claims 1-18 are presented for reconsideration.

Information Disclosure Statement

The documents listed under "Foreign Patent Documents" and "Other Documents" were not available to the Examiner to be reviewed. Submitted herewith is a Supplemental Information Disclosure Statement, Fee Letter and the following references: 1) G. Pfaff et al. reference; 2) R. Maisch et al. reference; and 3) PCT/WO 2000/43457. The Examiner is kindly requested receipt and consideration of these references by returning an initialed copy of the Supplemental Information Disclosure Statement.

As indicated in the International Search Report, US 5,766,335 is a substantively cumulative English language counterpart of EP 0803549. U.S. Patent 6,569,529 is a substantively cumulative English language counterpart of PCT/WO 2002/31058.

As requested by the Examiner, the publication date for the R. Maisch et al. reference is found on the internet. According to this information, the publication year ("*Erschienen*") is 1995.

Claim Rejection – Nonstatutory Double Patenting

Claims 1-3 and 9 are rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, 4, 6 and 7 of US 5,766,335.

US 5,766,335 is directed towards color luster pigments for use in printing inks, paint, and automotive lacquers. Additionally, it is taught in column 8 lines 28-50 that these color luster pigments may be used for the coloration of high molecular weight materials; for example, plastics, polyethylene, polypropylene and polyisobutylene.

The instant invention is directed towards cosmetic and personal care preparations or formulations comprising a coated gloss pigment and a cosmetically acceptable carrier. Specific cosmetic and personal care preparations that are taught in the Instant Examples include: lipsticks, finger nail varnish, oil-in-water facial foundation, powder eye shadow, pressed powder and lip gloss.

Therefore, the Applicants aver that the conflicting claims are not identical and are patentably distinct from each other. Finally, it is the position of the Applicants that the instant claims 1-3 and 9 are not obvious in view of claims 1, 3, 4, 6 and 7 of US 5,766,335.

The present nonstatutory double patenting rejection is addressed and is overcome.

Claim Rejection – 35 USC 103(a)

Claims 1-18 are rejected under 35 USC 103(a) as being unpatentable over Bujard et al (US 5,766,335).

The Examiner rejects the instant invention over US 5,766,335 stating that Bujard teaches a colored pigment comprising a core consisting of substantially transparent or metallic reflecting material and at least one coating consisting essentially of one or more silicon oxides having a molar ratio of oxygen to silicon being from 0.03 to 0.95 (column 2, line 62 to column 3 line 2).

The Applicants would like to clarify that the molar ratio of oxygen to silicon quoted above is incorrect. US 5,766,335 actually teaches (and claims) in column 2, line 62 to column 3 line 2 at least one coating layer consisting essentially of one or more silicon oxides having a molar ratio of oxygen to silicon being from 0.25 to 0.95.

The color luster pigments as taught in US 5,766,335 are used in typical technical coloration-type applications; for example, pigmenting plastic materials, paints and printing inks.

Furthermore, the Applicants aver it is not obvious to use the color luster pigments as suggested in US 5,766,335 in the cosmetic and personal care compositions of the instant invention.

Pearlescent (gloss) pigments for cosmetic applications, especially as color pigments in decorative cosmetics for topical skin applications, have, in addition to the desired visual effects, to meet several additional high demanding requirements; for example

- no skin sensitization,
- presenting very smooth & subtle shimmer to offer a natural look in color cosmetic or adding radiance and soft focus to skin care products,
- highest purity standard,
- non-staining of the skin in an unsightly way, by discharge of the colorant,
- pH stability,
- light stability,
- temperature stability and last but not least
- no toxic aspects.

In this regard, it must be noted, that biological and medical properties, strictly set forth by legal regulations, have to be regarded.

The cited reference does not take into account any one of these aspects since the demands for technical coloration-type applications are completely different.

Accordingly, it is not possible for a person of ordinary skill to transfer the preparations used for example for plastic materials, paints and printing inks as disclosed in US 5,766,335 into the field of cosmetic and personal care applications.

The teaching of US 5,766,335 gives no hint or suggestion for the skilled artisan which would lead or motivate one to use these preparations for the purpose claimed in the present invention. Therefore, the instant invention is not obvious to a person of ordinary skill in the art.

The Applicants submit that the 35 USC 103(a) rejection is addressed and is overcome.

The Examiner is kindly requested to reconsider and to withdraw the present rejection.

Applicants submit that the present claims are in condition for allowance and respectfully request that they be found allowable.

Respectfully submitted,



for

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